

GAHC010041822024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./608/2024

SOHAN SARKI
S/O SRI SURAJ SARKI
R/O BORO LINE,
BIRJHORA TEA ESTATE,
P.O., P.S. AND DIST. BONGAIGAON,
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:SMT.MANTU DAS
W/O SRI SUSHIL DAS
R/O BIRJHORA TEA ESTATE

P.S. AND DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MR A DASGUPTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 01.04.2024

1. Heard Mr. A. Dasgupta, learned Senior counsel assisted by

Mr. A. Das, learned counsel for the petitioner.

2. Also heard Ms. M. begum, learned Additional Public Prosecutor of the State as well as Mr. J. Abbas, learned counsel appearing for the respondent No.2, who is the mother of the respondent No.2, who is the mother of the victim girl.

3. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 by the petitioner Sri. Sohan Sarki, who has been detained behind the bars since 11.02.2024, in connection with Bongaigaon P.S. Case No. 48/ 2024.

4. The accusation in this case is that on 07.02.2024, the mother of the victim girl lodged an FIR before the Officer In-charge of Bongaigaon Police Station, inter alia, alleging that the daughter of the first informant was missing from her house. On receipt of the said FIR, Bongaigaon P.S. Case No. 48/2024 was registered under Section 365 of the Indian Penal Code and the investigation was initiated.

5. Ultimately on completion of the investigation Charge-Sheet was laid against the present petitioner under Section 365 of the Indian Penal Code read with section 4 of the POCSO Act, 2012.

6. Learned Senior counsel for the petitioner has submitted that the petitioner is a young boy of age 20 years and he was having love affair with the victim girl and they themselves surrendered before the Police Station. It is also submitted by the learned Senior counsel for the petitioner, that the petitioner would

cooperate in his trial and as there was a consensual relationship between the parties this case does not justify custodial detention of the present petitioner.

7. Learned Additional Public Prosecutor has also flag the statements of the victim recorded under Section 164 of the Code of Criminal Procedure during the trial and has submitted that in her statement under Section 164 of the Code of Criminal Procedure, the victim has stated that that she was in relationship with the present petitioner and the relationship between them was consensual.

8. On the other hand, learned counsel for the respondent has opposed the grant of bail on this stage as on the ground that the petitioner and the victim are neighbours and there is a possibility of petitioner influencing the victim girl during the pendency of the trial.

9. Learned Additional Public Prosecutor has objected to granting of bail to the petitioner on the ground that at the time of commission of the alleged offence, the victim girl was of 17 years of age.

10. I have considered the submissions made by learned counsel for both the sides and perused the material available on record, since it appears that the victim is of 17 years of age and the petitioner is of 20 years of age, this seems to be a case of having romantic relationship between the victim and the present petitioner. However, in any view of the victim and the present

petitioner it appears that the victim was below the age of the majority on the date of alleged offence Charge-Sheet has been laid.

11. In view of the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, this court is of considered opinion that custodial detention of the present petitioner may not be required if the petitioner cooperate in his trial.

12. The concern raised by the learned counsel for the respondent No.2, may be addressed by imposing appropriate conditions while granting bail to the petitioner.

13. In view of above, the petitioner, namely, Sohan Sarki is allowed to go on bail of Rs.30,000/-(Rupees Thirty Thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, Bongaigaon with following conditions:

(i) that the petitioner shall cooperate in his trial; and

(ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to the victim girl or to any other listed witness in the Charge-Sheet, so as to dissuade then from deposing against the petitioner in the pending trial against him.

14. In case the petitioner is found exerting any influence on the victim girl, that may be a good ground for cancellation of the bail granted to the present petitioner.

15. With the above observations, this bail application is

hereby disposed of.

JUDGE

Comparing Assistant